IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) Nos.977 and 1251 of 2003

CRP.NPD No.977/2003
Shaik Ansar Basha alias
S.A.Basha .. Petitioner(8th Applicant)

vs.

1.C.Y.Javid Ahmed
2.Rahman Hussain Sayeed
3.Abid Hussain Sayed
4.C.Y.Mushtaq Ahamed
5.Md.Noruddin Siddique
6.Khadar Basha
7.S.Khalaisha
8.Sadullah basha
9.Md.Shafiul Hussain
10.Ansar Basha
11.M.A.Mohamed Haneef Ghouse
12.N.Khaleel Ahamed
13.Major Shaik Ahamed
14.S.Dawood Sheriff
(Respondents 1 to 3, 5, 7,8,10,13
and 14 are not necessary parties
Hence they are given up) .. Respondents (1 to 7 and 8 to 11 applicants for shares and 1 to 4 non sharers applicants)

C.R.P.NPD.No.1251/2003
Mohamed Nooruddin Siddique .. Petitioner (5th Applicant for sharer)

vs.

1.C.Y.Javid Ahmed
2.Rahman Hussain Sayeed
3.Abid Hussain Sayed
4.C.Y.Mushtaq Ahamed
5.Khader Basha
6.S.Khalaisha
7.S.A.Basha

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8.Sadullah Basha
9.Md.Shafiul Hussain
10.Ansar Basha
11.M.A.Mohamed Haneef Ghouse
12.N.Khaleel Ahamed
13.Major Sahik Ahamed
14.S.Dawood Sheriff

.. Respondents/Respondents Applicants 1 to 4 for Respondnets 1 to 3, 6 to 18 10, 13, and 4 are not necessary parties. Hence they are given up

Revision Petitions filed against the order dated 25.2.2003 of the Scheme Court (Principal Sub Judge Court, Chingleput) on Memo in Scheme O.S.No.27/1940.

For Petitioners : Mr.Zaffarullah Khan, in CRP.NPD.No.977/2003.

Mr.Satish Parasaran, in CRP.NPD.No.1251/2003.

For Respondents : Ms.Jayashree, in both C.R.Ps. 4, 6 and 9 in CR NO. 977/03 AND rr1, 4 to 6, 9 to 12 in CRP NO. 1251/03

COMMON ORDER

These Revision Petitions have been filed against the order dated 25.2.2003 of the Scheme Court (Principal Sub Judge Court, Chingleput) on Memo in Scheme O.S.No.27/1940.

2.Heard the respective counsel and also the parties in person.

3.Civil Revision Petition No.977/2003 was filed by Sheik Ansar Basha, alias S.A.Basha, whose application for appointment of trustee of the Covelong Darga was rejected by the Principal Sub-Judge (Scheme Court) on 25.2.2003 on memo in Scheme O.S.No.27/1940. He is challenging not only the rejection of his application but also the appointment of respondents 4, 6, 9, 11 and 12 as trustees.

4.C.R.P.NPD.No.1251/2003 was filed by Md.Nooruddin Siddique challenging the very same order of the Scheme Court dated 25.2.2003 not only the rejection of his application as a trustee for the same Darga, but also the appointment of the same respondents as trustees as shown in the other C.R.P.NPD.No.977/2003. In effect the petitioners while reiterating that they should have been appointed as trustees, contended that

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the respondents above, namely, C.Y.Javid Mushtaq Ahmed, Khadar Basha, Md.Shafiul Hussain, M.A.Mohamed Haneef Ghouse and N.Khaleel Ahamed ought not to have been appointed at all.

5.First let me consider why the revision petitioner's (CRP.NPD.No.977/2003) application was rejected by the Scheme Court.

6.The Scheme Court considering the fact that the revision petitioner was born in 1942 and he is an aged man when compared to other persons, rejected his application. The Scheme Court also adverted to the fact that even though he mentioned in the application that he has studied up to E.S.S.L.C., he did not produce any document to prove his qualification.

7.I do not find any illegality in the above findings of Scheme Court while rejecting the petitioner's application warranting interference under Sec.115 C.P.C. In a trust matter of this nature while appointing the trustees on the basis of a Scheme decree, some element of discretion is always conferred on the scheme court while appointing the trustees keeping in mind the welfare of the trust and its proper administration. Further in the Scheme decree passed in O.S.No.27/1940 on 19.12.1941, the Scheme Court has clearly observed that the court while making appointment of trustees, shall have regard to the candidate's status, learning, influence, character and piety which shall be grounds for preference.

8.Whether these grounds are adhered to in the appointment of the five respondents whose appointments were challenged in both the revision petitions, ought to be considered now. Insofar as the appointment of M.A.Md.Haneef Ghouse and N.Kaleel Ahamed are concerned, the major objections seem to be that they are practising lawyers who could not devote much time for the institution.

9.I do not find any merit in the above objection as the practising lawyers would find time for administration of the institution and on that ground their appointment cannot be set aside.

10.Insofar as C.Y.Mushtaq Ahamed's appointment is concerned it is assailed on the ground that when he was the President of the Board of Trustees, he misrepresented to the court that on 21.2.2001 in I.A.No.72/2001 and called for applications only from the male lineal descendants of the founder. The further allegations against him is that when he was functioning as a trustee from 1996, he failed to deposit 5% of the hundial income and failed to account for the grant of Rs.3,50,000/- obtained by him from the Tamil Nadu Wakf Board.

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11.A counter affidavit was filed by C.Y.Mushtaq Ahmed denying the allegations. He raised a preliminary objection for considering the revision petitioners themselves as the revision petitioners did not make any objection within the stipulated time of 15 days before the Scheme Court and having failed to raise any objection at the relevant point of time, they could not be permitted to raise these objections for the first time before this court.

12.I find force in the above contentions of this respondent. It was not explained by the revision petitioners for not raising the objections before the Scheme Court itself when 15 days' time were given for doing so. Further the allegations levelled against him still remain as allegations and they are substantiated with adequate materials. In fact the notification calling for applications for the post of sharer trustee from the lineal male descendants is concerned, this court in C.R.P.NPD.No.3241/2001 on 30.10.2001 clearly observed that this notification is simply the reproduction of the order passed as per the decree and therefore the challenge made to their notification was rightly rejected by the Scheme Court. Further on the basis of the allegations alone the appointment cannot be set aside. In fact, some allegations were levelled against the revision petitioner himself in CRP.NPD.No.1251/2003 resulting in his removal as a trustee but his innocence was proved before the court which directed reinvestment of a sum of Rs.26,635.59 spent by the petitioner from his pocket. Therefore I do not find any merits in challenging the appointment of C.Y.Mushtaq Ahamed.

13.Insofar as the appointment of Kadar Basha is concerned it was mainly objected to on the ground that when his father was a sharer as on date, he is not a sharer and therefore he could not be appointed as a trustee.

14.No material was placed before me by the revision petitioners to show that when his father who is a sharer is very much there, the son could not be appointed as trustee. No provision in the Scheme decree passed in O.S.No.27/1940 was brought to my knowledge barring such appointments. In his counter affidavit, the above said Kadar Basha referred to an appointment in the year 1973 when one C.N.Moinuddin Ahamed, S/o.Nazir Ahamed was appointed as a sharer trustee during the lifetime of his father. He also referred to two other such appointments and in such circumstances I do not find any merit in the contentions of the revision petitioners and this appointment cannot also be set aside.

15.Regarding the appointment of Shafiul Haq is concerned excepting making some general and bald allegations, no specific

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case has been made out to set aside his appointment. As already mentioned by me, the revision petitioners did not explain before this court with conviction as to their failure to raise these objections before the Scheme Court when 15 days time were given for doing so. Further I do not find any substantial material to interfere with the order of the Scheme Court, which has got some element of discretion in the matter of this nature. Unless such exercise of discretion is illegal, unreasonable and perverse, this court cannot interfere with the same under Sec.115 C.P.C.

16.In the result, both these Civil Revision Petitions are dismissed. No costs. C.M.P.Nos.10183 and 13766 of 2003 are also dismissed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Principal Subordinate Judge
Chengalpet

+2ccs to Mr. Hajee. Md. Nooruddin Sidque,Advocate sr no. 31853

bv(Co)
nm(14.06.07) C.R.P.(NPD)977 & 1251/03.

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